-GK-1001

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P. NO. 2907 OF 2005

PETITIONER : M/S Uniworth Ltd.
923-945,Urla , Industrial Area
Sarona Raipur (CG)
Through its Authorized Signatory
Deputy General Manager
Shri. A.P. Khetan
S/o Shri R.P. Khetan, age 41 years

2959/05 K. Saksena
Ph Presented by Adv.
dated 29/6/05

VERSUS

RESPONDENTS :

1) Union of India,
Ministry of Finance,
Department of Revenue,
North Block, New-Delhi.

2) Customs Excise & Service Tax
Appellate Tribunal (CESTAT)
West Block No. II
R.K. Puram, New Delhi

3) Commissioner
Central Excise & Customs,
New Central Revenue Building,
Tikra Para, Raipur (C.G.)

सत्य जायसवाल
एस. के. जायसवाल
बिलासपुर (छ.ग.)
बिलासपुर तहसील क्षेत्र

Feb. 1959

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA .

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

127

मामला क्रमांक WP 2907/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	8.7.2005 Mr. P. Diwakar, Sr. Counsel with Mr. Kunal Das, Counsel for the petitioner. Heard learned Sr. Counsel for the petitioner on the question of admission of this writ petition. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the legality and propriety of order dated 4.5.2005 (Annexure P-5) passed by respondent No.2-CESTAT whereby the prayer of the petitioner for staying all pre-deposit of central excise duty Rs.92,92,767/- and penalty of Rs.2 Lacs was partly rejected and the petitioner was directed to deposit Rs.45 lakhs within a period of eight weeks i.e. half of the total amount assessed against the petitioner. Having heard learned Sr. Counsel for the petitioner, I have perused the petition, show cause notice dated 1.9.1999 issued by Superintendent, Central Excise, Range IV, Raipur, appellate order dated 22.12.2004 passed by the Commissioner (Appeals) Customs & Central Excise, Raipur and also the order of CESTAT. Vide decision dated 28.9.2001 the Assistant Commissioner, Central Excise Division, Raipur imposed liability of central excise duty and penalty on the petitioner holding that the petitioner Company sold wool waste and rejected wool yarn in the Domestic Tariff Area (DTA) at concessional rate of duty by availing the benefit of notification No. 2/95-CE dated 4.1.1995 without prior	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P 2907/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

-2-

permission or satisfaction of the Assistant Commissioner, Excise. This order was challenged before the Commissioner (Appeals), who in turn also confirmed the order and held that it is an established fact that the petitioner did not intimate and obtain necessary permission from the Assistant Commissioner despite the specific direction from the department vide Inspector In-charge's letters dated 25.9.1998 & 28.9.1998 and cleared the goods which indicates that they have deliberately ignored the compliance of the said condition of the Notification. Against the said order the petitioner preferred an appeal before the CESTAT and prayed for stay, which has been partly rejected by the tribunal vide impugned order.

Learned Sr. Counsel for the petitioner argued that no prior permission was required by the petitioner and there was no violation of notification No. 2/95-CE dated 4.1.1995. Therefore, the tribunal ought to have stayed the order imposing excise duty and penalty in question.

As per averments made in the writ petition, it is admitted position that the petitioner is a 100% export oriented unit, approved by the Board of Approvals for 100% EOU's for manufacture & export of Wool Tops (Dyed & Grey), woolen yard and blended yarn (dyed & grey). The petitioner is required to export 100% production excluding rejects not exceeding 5% which can be sold in the Domestic Tariff Area (DTA) i.e. within the country.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P 2907/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

During the period February, 1999 to September, 1999 the petitioner sold wool waste and rejected wool yarn in the Domestic Tariff Area (DTA) at concessional rates of duty by availing the benefit of Notification No. 2/95-CE dated 4.1.1995, whereas the orders made by Assistant Commissioner and the Commissioner (Appeals) shows that the petitioner herein failed to comply with the requirements of above notification, as he sold the material in the domestic market without satisfying the Assistant Commissioner and his permission, as required under the said notification.

It is admitted position that questioning the legality and correctness of the said orders an appeal has been filed before the statutory appellate board i.e. CESTAT, Delhi, which is pending consideration before the said Tribunal, therefore at this stage, when the appeal is already pending, this court is not required to express opinion on the merits of the case and the petitioner has approached this Court only on refusal of total stay on imposition of excise duty and penalty. The tribunal vide impugned order has already stayed the deposit of 50% of amount and the petitioner has been asked to deposit only Rs.45 Lacs within eight weeks from the date of the order.

Having perused the order of the Commissioner (Appeals) and the records, I am of the opinion that the impugned order passed by the Tribunal is not in any way illegal or incorrect which requires interference by this Court and moreover, as argued by learned Sr.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 2907/05 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Counsel that as per statutory requirement for entertainment of the appeal the petitioner was required to deposit 50% of the amount in question. Therefore, learned counsel for the petitioner has not been able to make out a case to interfere with the interlocutory order passed by the CESTAT by exercising the extraordinary jurisdiction under Article 226/227 of the Constitution of India. In the result, the petition of the petitioner fails, same is liable to be dismissed and it is hereby dismissed at the admission stage itself. Sd/- L.C. Bhadoo Judge	

Roshan/-